

1 TOURISM, ARTS AND HERITAGE CABINET

2 Department of Fish and Wildlife Resources

3 (Amendment)

4 301 KAR 2:090. Means by which migratory game birds may be taken.

5 RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

6 STATUTORY AUTHORITY: [~~KRS 13A.350,~~ 150.025(1), 150.305(3), (4), 150.360(2),

7 150.600, 50 C.F.R. 20, 21

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department

9 to promulgate administrative regulations to establish open seasons for the taking of

10 wildlife and to regulate bag limits. KRS 150.305(3) and (4) authorize the department to

11 regulate the possession of harvested migratory birds and facilitates the inspection of

12 commercial preservation facilities. KRS 150.360(2) authorizes the department to restrict

13 methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking

14 of waterfowl on public and private land. This administrative regulation establishes

15 requirements for the taking of waterfowl within the frameworks established by 50 C.F.R.

16 Parts 20 and 21~~[This administrative regulation pertains to the means by which migratory~~

17 ~~game birds, doves, woodcock and snipe, and migratory waterfowl, ducks, geese, coots,~~

18 ~~gallinules and Virginia and Sora rails, may be taken. This administrative regulation is~~

1 ~~necessary for the continued protection and conservation of the migratory birds listed~~  
2 ~~herein, and to insure a permanent and continued supply of the wildlife resource for the~~  
3 ~~purpose of furnishing sport and recreation for present and future residents of the state.~~  
4 ~~The methods and means listed are in compliance with, and dictated by, federal regulations~~  
5 ~~promulgated by the United States Fish and Wildlife Service. The function of this~~  
6 ~~administrative regulation is to provide for the prudent taking of migratory birds within~~  
7 ~~reasonable limitations based upon an adequate supply].~~

8     Section 1. Definitions. (1) "Baited area" means any area where shelled, shucked, or  
9 unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring,  
10 attracting, or enticing such birds is directly or indirectly, placed, exposed, deposited,  
11 distributed, or scattered, and such area shall remain a baited area for ten (10) days  
12 following complete removal of all such corn, wheat or other grain, salt, or other feed.

13     (2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of  
14 shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to  
15 constitute for such birds a lure, attraction or enticement to, on or over any areas where  
16 hunters are attempting to take them.

17     Section 2. Prohibited hunting methods. (1) Migratory birds on which open seasons are  
18 prescribed may be taken by any method except those prohibited in this section.[:]

19     (2) [Prohibited hunting methods.] Migratory game birds and migratory waterfowl may  
20 not be taken:

1 (a) With a trap, snare, net, crossbow, rifle, pistol, swivel gun, shotgun larger than ten  
2 (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or  
3 stupefying substance;

4 (b) With a shotgun of any description capable of holding more than three (3) shells,  
5 unless it is plugged with a one (1) piece filler, incapable of removal without disassembling  
6 the gun, so its total capacity does not exceed three (3) shells, except that this restriction  
7 does not apply during the light geese conservation order season;

8 (c) From or by means, aid, or use of a sinkbox or any other type of low floating device,  
9 having a depression affording the hunter a means of concealment beneath the surface of  
10 the water;

11 (d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance,  
12 or aircraft of any kind;

13 (e) From or by means of any motorboat or other craft having a motor attached, or any  
14 sailboat, unless the motor has been completely shut off ~~[and/]~~ or the sails furled, and its  
15 progress therefrom has ceased; provided, that a craft under power may be used to retrieve  
16 dead or crippled birds; however, crippled birds may not be shot from such craft under  
17 power;

18 (f) By the use or aid of live birds as decoys; ~~[although not limited to,]~~ it shall be a  
19 violation of this paragraph for any person to take migratory waterfowl on an area where  
20 tame or captive live ducks or geese are present, unless such birds are and have been for



1 a period of ten (10) consecutive days prior to such taking, confined within an enclosure  
2 which substantially reduces the audibility of their calls and totally conceals such birds from  
3 the sight of wild migratory waterfowl;

4 (g) By the use or aid of recorded or electrically amplified bird calls or sounds, or  
5 recorded or electrically amplified imitations of bird calls or sounds, except that this  
6 restriction does not apply during the light geese conservation order season;

7 (h) By the means or aid of any motor-driven land, water, or air conveyance or any  
8 sailboat used for the purpose of or resulting in the concentration, driving, rallying, or  
9 stirring up of any migratory bird; or

10 (i) By the aid of baiting, or on or over any baited area, except that. ~~As used in this~~  
11 ~~paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or~~  
12 ~~scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed~~  
13 ~~so as to constitute for such birds a lure, attraction or enticement to, on or over any areas~~  
14 ~~where hunters are attempting to take them; and "baited area" means any area where~~  
15 ~~shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever~~  
16 ~~capable of luring, attracting, or enticing such birds is directly or indirectly, placed,~~  
17 ~~exposed, deposited, distributed, or scattered; and such area shall remain a baited area for~~  
18 ~~ten (10) days following complete removal of all such corn, wheat or other grain, salt, or~~  
19 ~~other feed. However,~~ nothing in this paragraph shall prohibit:

20 1. The taking of all migratory game birds, including waterfowl, on or over standing

1 crops, flooded standing crops, including aquatics, flooded harvested croplands, grain  
2 crops properly shocked on the field where grown, or grains found scattered solely as the  
3 result of normal agricultural planting or harvesting; and

4 2. The taking of all migratory game birds, except waterfowl, on or over any lands where  
5 baiting has occurred~~[shelled, shucked, or unshucked corn, wheat or other grain, salt, or~~  
6 ~~other feed has been distributed or scattered]~~ as the result of:

7 a. Bona~~[bona]~~ fide agricultural operations or procedures; or~~[, or as a result of]~~

8 b. Manipulation~~[manipulation]~~ of a crop or other feed on the land where grown for  
9 wildlife management purposes; provided, that manipulation for wildlife management  
10 purposes does not include the distribution or scattering of grain or other feed once it has  
11 been removed from or stored on the field where grown;

12 ~~(j) Except from a pit or blind in Ballard County only, as prescribed in 301 KAR 2:055.~~  
13 ~~This method of taking applies only to waterfowl].~~

14 Section 3[2]. Transporting, Importing and Exporting. (1) Migratory game birds lawfully  
15 killed and possessed in accordance with the hunting laws and regulations of any foreign  
16 country or any state in the United States or subdivision thereof, must be imported,  
17 exported, or transported in accordance with the provisions specified in Title 50, Chapter  
18 1, Subchapter B, Part 20 of the Code of Federal Regulations.

19 (2) No person shall transport within the United States any migratory game birds, except  
20 doves, unless the head or one (1) fully feathered wing remains attached to each such bird

1 at all times while being transported from the place where taken until they have arrived at  
2 the personal abode of the possessor or a commercial preservation facility.

3 Section 4[3]. Tagging and Recordkeeping Requirements. (1) No person shall put or  
4 leave any migratory game birds at any place, other than at his personal abode, or in the  
5 custody of another person for picking, cleaning, processing, shipping, transportation, or  
6 storage, including temporary storage, or for the purpose of having taxidermy services  
7 performed, unless such birds have a tag attached, signed by the hunter, stating his:

8 1. Address;~~[address,~~

9 2. The~~[the]~~ total number and species of birds~~;~~<sup>i</sup>~~]~~ and

10 3. The~~[the]~~ date such birds were killed.

11 (2) Migratory game birds being transported in any vehicle as the personal baggage of  
12 the possessor shall not be considered as being in storage or temporary storage.

13 (3)~~[(2)]~~ No person shall receive, or have in custody, any migratory game birds belonging  
14 to another person unless such birds are tagged as required under subsection (1) of this  
15 section.

16 (4)~~[(3)]~~ No person shall transport migratory game birds belonging to another person  
17 unless such birds are tagged as required under subsection (1) of this section.

18 Section 5[4]. Commercial Preservation Facilities. (1) No commercial preservation facility  
19 shall receive or have in custody any migratory game birds unless such birds are tagged as  
20 required in Section 4[3](1) of this administrative regulation.



1 (2) No commercial preservation facilities shall:

2 (a) Receive or have in custody any migratory game birds unless accurate records are  
3 maintained showing:

4 1. The[the] number of each species;

5 2. The[the] date such birds were received;

6 3. The[the] name and address of the person from whom such birds were received;

7 4. The[the] date such birds were disposed of; and

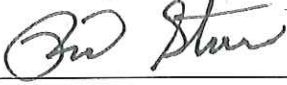
8 5. The[the] name and address of the person to whom such birds were delivered.

9 (b) Destroy any records required to be maintained under this section for a period of  
10 one (1) year following the last entry on the record.

11 (c) Prevent any person authorized to enforce this administrative regulation from  
12 entering such facilities at all reasonable hours and inspecting the records and the  
13 premises where such operations are being carried on.

14 Section 6[5]. Wanton Waste Law. No person shall kill or cripple any migratory game  
15 bird pursuant to this administrative regulation without making a reasonable effort to  
16 retrieve the bird and include it in his daily bag limit.

Approved by the Fish and Wildlife Commission



Rich Storm, Commissioner  
Department of Fish and Wildlife Resources



Don Parkinson, Secretary  
Tourism, Arts and Heritage Cabinet

Date: 8/14/19



**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on October 28, 2019 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2019.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone number: (502) 564-3400, email: [fwpubliccomments@ky.gov](mailto:fwpubliccomments@ky.gov)

REGULATORY IMPACT ANALYSIS  
AND TIERING STATEMENT

301 KAR 2:090. Means by which migratory game birds may be taken.

Contact Person: Jessica Tyler

Email: Jessica.tyler@ky.gov

Phone: 502-564-3400

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes means by which migratory game birds may be taken. These means are consistent with federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the possession, transportation, importation, exportation, tagging and commercial handling of legally taken migratory game birds. It prohibits the wanton waste of harvested migratory game birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the means by which migratory birds may be harvested in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360(2) authorizes the department to restrict methods for the taking of wildlife. KRS 150.305(3) and (4) authorize the department to regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the means by which migratory bird harvest may occur and how harvested birds are handled consistent with state, national, and international management goals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will remove the restrictions on the number of shells a shotgun may hold during the light goose conservation order season. This amendment will also remove the



restrictions on the use of electronic calling devices when hunting light geese during the light goose conservation order season. This amendment also removes the requirement to hunt from a pit or blind in Ballard County.

(b) The necessity of the amendment to this administrative regulation: This amendment increases opportunity for light goose hunters. Federal laws which prohibit the use of a gun capable of holding more than three (3) shotshells and the use of electronic calls during regular waterfowl seasons, have been removed for the light goose conservation order season. Light geese (snow and Ross's geese) are continentally overabundant and the conservation order season was established to increase harvest on these species. Light goose populations are damaging fragile arctic habitats where they nest. Removing the requirement to hunt from blinds or pits makes Ballard County similar to all other counties. Hunting from blinds is no longer necessary to meet management objectives.

(c) How the amendment conforms to the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments affected by this administrative regulation: There are approximately 40,000 migratory bird hunters in Kentucky who are impacted by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Migratory bird hunters will now have the opportunity to hunt light geese during the Conservation order with guns capable of holding more than three (3) shotshells and to use electronic calling devices. Migratory bird hunters in Ballard County would have the opportunity to hunt outside of established blinds or pits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to those identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Goose hunters will have the opportunity to harvest more light geese during the Conservation order and overabundant goose populations can be lowered to meet continental population management objectives.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment. It will not be necessary to increase any other fees or increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.



## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

301 KAR 2:090. Means by which migratory game birds may be taken.

Contact Person: Jessica Tyler

Email: Jessica.tyler@ky.gov

Phone number: (502) 564-3400

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department's Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150.360(2), 150.305(3) and (4), 150.600, and 50 C.F.R. Parts 20 and 21.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 CFR Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons and methods by which migratory birds may be harvested within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 CFR Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 CFR Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag, possession limits and means by which migratory birds may be legally harvested. 50 CFR Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during, and after periods open for hunting and allows for the harvest and means of harvest of light geese under a conservation order season.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters.